

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE *ex rel.*,)
M. JANE BRADY, Attorney General) C.A. No. 99C-09-168 - JTV
of the State of Delaware,)
)
Plaintiff,)
)
v.)
)
WELLINGTON HOMES, INC., a Delaware)
corporation, WELLINGTON HOMES, L.L.C., a)
Delaware limited liability corporation, 397 PRO-)
PERTIES, L.L.C., a Delaware limited liability)
corporation, CHRISTIANA VENTURES, INC., a)
Delaware corporation, ALBERT VIETRI, TINA)
MARIE VIETRI, JOSEPH L. CAPANO, II and)
JOSEPH L. CAPANO,)
)
Defendants.)

Submitted: July 27, 2005

Decided: November 29, 2005

Olha N.M. Rybakoff, Esq., Department of Justice, Wilmington Delaware. Attorney for the State of Delaware.

Defendants Wellington Homes, Inc., Wellington Homes, L.L.C., 397 Properties, L.L.C., and Albert Vietri, and Tina Marie Vietri, *Pro se*.

Adam Balick, Esq., Balick & Balick, Wilmington, Delaware. Attorney for Defendants Christiana Ventures and Joseph Capano.

Richard H. Cross, Jr., Esq., Wilmington, Delaware. Attorney for Defendant Joseph Capano.

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Upon Consideration of the Renewal of Motion for Judgment
as a Matter of Law Filed by Defendants
Christiana Ventures, Inc., and Joseph L. Capano
GRANTED IN PART; DENIED IN PART

Upon Consideration of the Renewal of Motion for Judgment
As a Matter of Law on the Grounds of Insufficiency of Evidence
Filed by Defendant Christiana Ventures, Inc.
GRANTED

Upon Consideration of the Renewal of Motion for Judgment
As a Matter of Law on Grounds of Insufficiency of Evidence
Filed by Defendant Joseph L. Capano
DENIED

VAUGHN, President Judge

ORDER

Upon consideration of the Motion for Renewal of Judgment as a Matter of Law filed by defendants Christiana Ventures, Inc., ("Christina Ventures") and Joseph L. Capano, the Renewal of Motion for Judgment as a Matter of Law on the Grounds of Insufficiency of Evidence filed by Defendant Christiana Ventures, the Renewal of Motion for Judgment as a Matter of Law on Grounds of Insufficiency of Evidence filed by Defendant Joseph L. Capano, plaintiff's opposition, and the record of the case, it appears that:

1. Jury selection and trial in the above-captioned matter began on October 12, 2004 and ended with the return of a jury verdict on December 7, 2004. The questions presented to the jury were whether the defendants had violated the Delaware Consumer Fraud and Deceptive Trade Practices Acts in connection with new homes

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constructed in a residential subdivision known as Lea Earra Farms; whether any violations of the Delaware Consumer Fraud Act found by the jury were willful; and, if so, how many violations were willful and what amount of civil penalties should be assessed for those violations. The jury found that Christiana Ventures violated the Uniform Deceptive Trade Practices Act but was unable to reach a verdict on the question whether it violated the Consumer Fraud Act. It was unable to reach a verdict on Joseph L. Capano on any question. The defendants move post-trial for judgment as a matter of law. Defendants Joseph L. Capano II, Wellington Homes, Inc., Wellington Homes. L.L.C., 397 Properties, L.L.C., Albert A. Vietri and Tina Marie Vietri join in the motions.

2. When a motion for judgment as a matter of law is made by the defendant, it is the duty of the trial judge to determine whether, under any reasonable interpretation of the evidence, the jury could justifiably find in favor of the plaintiff and against the defendant.¹ The evidence must be viewed in the light most favorable to the non-moving party.²

3. As to Christiana Ventures, the great weight of the evidence was that all of the houses involved were built by Wellington Homes, Inc./Wellington Homes. L.L.C. and 397 Properties, L.L.C., not Christiana Ventures. The enigma of Christiana Ventures having executed a release of liens (which was apparently altered later) was never explained by the evidence. The release of liens itself is not a sufficient basis to support a finding that Christiana Ventures violated the Consumer Fraud Act or the

¹ *Ebersole v. Lowengrub*, 208 A.2d 495 (Del. 1965).

² *Russell v. Kanaga*, 571 A.2d 724 (Del. 1990).

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Deceptive Trade Practices Act as to any of the homeowners involved. The other bits and pieces of evidence mentioning Christiana Ventures, considered as a whole with the release of liens, is insufficient to support a finding that Christiana Ventures violated either of the Acts. The evidence is insufficient to support the plaintiff's theory that Christiana Ventures was responsible for the acts of the other defendants. The motions for judgment as a matter of law are granted as to Christiana Ventures.

4. After reviewing my trial notes, I continue to believe that the testimony of Ms. Gillen precludes a judgment as a matter of law for Mr. Capano. Accordingly, his motions for judgment as a matter of law are denied. I recognize that the Attorney General believes there is other evidence against him as well. I will address the limits of any retrial of that defendant separately in pre-trial proceedings before any retrial.

5. Accordingly, the Motion for Renewal of Judgment as a Matter of Law filed by defendants Christiana Ventures and Joseph L. Capano is ***granted in part and denied in part***. The Renewal of Motion for Judgment as a Matter of Law on the Grounds of Insufficiency of Evidence filed by Defendant Christiana Ventures is ***granted***. The Renewal of Motion for Judgment as a Matter of Law on Grounds of Insufficiency of Evidence filed by Defendant Joseph L. Capano is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
C. Scott Reese, Esq.
File